

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1865

EUREKA, CA 95502-4908

VOICE (707) 445-7833

FACSIMILE (707) 445-7877



W 20a

Filed: March 30, 2000
49th Day: May 18, 2000
Staff: Tiffany S. Tauber
Staff Report: April 26, 2000
Hearing Date: May 10, 2000
Commission Action:

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: County of Humboldt

DECISION: Approval with Conditions

APPEAL NO.: **A-1-HUM-00-16**

APPLICANT: **Steve Moser, Moser Realty**

PROJECT LOCATION: North side of Murray Road near the Mad River in McKinleyville, Humboldt County, APN 511-11-14.

PROJECT DESCRIPTION: Construction of 37 single-family residences and associated drainage facilities and a subdivision identification sign at a 37-lot residential subdivision on 26.5 acres.

APPELLANTS: Pat Hassen representing Concerned Citizens of McKinleyville

SUBSTANTIVE FILE: 1) Humboldt County file no. CDP-99-42, and
DOCUMENTS 2) Humboldt County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

1. **SUMMARY OF STAFF RECOMMENDATION: NO SUBSTANTIAL ISSUE**

The staff recommends that the Commission, after public hearing, determine that NO substantial issue exists with respect to the grounds on which the appeal has been filed. These grounds include alleged project inconsistencies with Humboldt County's certified LCP policies pertaining to visual resources and geologic hazards. The appellant has not raised any substantial issue with the local government's action and its consistency with the certified LCP.

Humboldt County approved a coastal development permit for the construction of 37 single-family residences and associated drainage facilities on 37 lots and a subdivision identification sign to be constructed at the Sand Pointe subdivision off of Murray Road in McKinleyville. The County required the development to be constructed consistent with the subdivision's Planned Development design permit and with Coastal Development Permit A-1-HUM-96-70 granted by the Commission on July 8, 1998 for the division of the property and associated infrastructure development. The Commission completed action on revised findings for the subdivision and associated infrastructure coastal development permit in February of this year.

The appellants contend that the approved project for the construction of 37 single family residences and associated drainage and sign raises a substantial issue of conformance with the County's LCP policies pertaining to visual resource protection and geologic hazards. First, the appellant asserts that the County's action is inconsistent with Section 3.42 of the McKinleyville Area Plan (MAP) which incorporates Coastal Act policies 30251 and 30253 pertaining to the protection of visual resources. Section 3.42 of the MAP requires that permitted development be sited and designed to protect public views to and along the ocean and scenic coastal areas, and to be visually compatible with the character of surrounding areas. The appellant asserts that the 35-foot homes allowable on some lots would block public views to and along the ocean and that the height and bulk of the maximum allowed 35-foot-high, 5,000-square-foot homes would be inconsistent with the character of the surrounding area.

However, although the approved residences would block portions of some ocean views from public vantage points, the degree to which coastal visual resources would be affected is not substantial because public views have been protected through other project elements. Furthermore, the character of the surrounding area is diverse and the proposed residences are of similar height and bulk as some homes located in adjoining developments to the north and south of the subdivision.

Second, the appellant asserts that the approved development is inconsistent with MAP Section 3.28 which incorporates Coastal Act Section 30253 and requires new

development to neither create or contribute to erosion or geologic instability in areas of high geologic hazard. The appellant asserts that the weight and height of the maximum allowable 35-foot-high and/or 5,000-square-foot homes could cause erosion on the coastal bluff in areas of asserted geologic instability.

However, the County conditioned approval of the homes with requirements that grading and the construction of foundations and drainage conform to the recommendations of a geotechnical report prepared to ensure that the homes would not contribute to geologic hazards. In addition, the appellant has not provided compelling or factual information to support the contention that the project would contribute to geologic hazards and that it is inconsistent with the LCP.

For all of the above reasons, staff recommends the Commission find that the appeal raises no substantial issue of consistency with the certified LCP. The Motion to adopt the Staff Recommendation of No Substantial Issue is found on Page 5.

STAFF NOTES:

1. Appeal Process

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within one hundred feet of a wetland or stream or three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff.

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments, which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission because it is located between the sea and the first public road paralleling the sea as well as within 300 feet of the mean high tide line and top of the seaward face of a coastal bluff. Accordingly, the grounds for appeal may include an allegation that the development does not conform to the certified LCP or the access policies of the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a de novo hearing on the appeal, because the proposed development is between the first road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellant and persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

2. Filing of Appeal

The appellants filed an appeal to the Commission in a timely manner on March 30, 2000 within 10 working days after receiving notice of final local action on March 14, 2000 (Exhibit No. 4).

3. Background

On July 8, 1998, the Commission approved with conditions, Coastal Development Permit No. A-1-HUM-96-70 for the subdivision of 26.5 acres into 37 single-family lots and common areas ranging from 0.34 acres to 1.22 acres, with an average size of 0.64 acres and for related subdivision infrastructure development such as roads, utilities, drainage improvements etc. The subdivision, known as "Sand Pointe" has been the subject of numerous hearings before the Commission on previous occasions. Most recently, on February 16, 2000, the Commission adopted revised findings for the approval of the Sand Pointe subdivision.

In July, 1999, the applicant applied to the County for a coastal development permit for the construction of the 37 single-family homes which was approved by the Humboldt County Planning Commission on March 2, 2000 and is the subject of this appeal. While the Commission has previously addressed the consistency of the Sand Pointe subdivision with the County's LCP during the permit process for the subdivision, the proposed construction of the homes themselves has not previously been before the Commission. The current project on appeal for the construction of 37 homes is separate from the Commission's previous action on the subdivision. However, the approved project which is the subject of the current appeal is related to the previous Commission action to the

extent that it complies with conditions imposed by the Commission for the subdivision in Coastal Development Permit No. A-1-HUM-96-70.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION

MOTION: I move that the Commission determine that Appeal No. A-1-HUM-00-16 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

STAFF RECOMMENDATION ON NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-1-HUM-00-16 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. BACKGROUND

On July 8, 1998, the Commission approved with conditions, Coastal Development Permit No. A-1-HUM-96-70 for the subdivision of 26.5 acres into 37 single-family lots and common areas ranging from 0.34 acres to 1.22 acres, with an average size of 0.64 acres and for related subdivision infrastructure development such as roads, utilities, drainage improvements etc. The subdivision, known as “Sand Pointe” has been the subject of numerous hearings before the Commission on previous occasions. Most recently, on February 16, 2000, the Commission adopted revised findings for the approval of the Sand Pointe subdivision.

In July, 1999, the applicant applied to the County for a coastal development permit for the construction of the 37 single-family homes which was approved by the Humboldt

County Planning Commission on March 2, 2000 and is the subject of this appeal. While the Commission has previously addressed the consistency of the Sand Pointe subdivision with the County's LCP during the permit process for the subdivision, the proposed construction of the homes themselves has not previously been before the Commission. The current project on appeal for the construction of 37 homes is separate from the Commission's previous action on the subdivision. However, the approved project which is the subject of the current appeal is related to the previous Commission action to the extent that it complies with conditions imposed by the Commission for the subdivision in Coastal Development Permit No. A-1-HUM-96-70 (Exhibit No. 7).

When the subdivision permit was before the Commission, the project's consistency with visual resource protection policies of the LCP was addressed primarily by reducing the proposed density of the subdivision. Other visual resource protection conditions addressed lighting, deletion of an RV storage area, elimination of a locked gate, undergrounding utility lines, and requiring open-style fences. In addition, building height restrictions (23-feet in some areas and 35-feet in others) and a maximum home size (5,000-square-foot) were voluntarily imposed by the applicant and were incorporated into a deed restriction condition on the residential lots. While the Commission addressed the issue of protecting public coastal views as reflected in the conditions of approval for the subdivision, the homes and their heights were not specifically addressed.

Furthermore, to address both visual issues and geologic issues, the Commission attached Special Condition No. 7 which requires the applicant to submit for the review and approval of the Executive Director, a revised subdivision map that has been approved by the County. The revised map is to demonstrate the following restrictions: (a) the proposed westernmost 21 parcels shall be eliminated; (b) there shall be no more than 37 lots; (c) the remaining 37 lots may be reconfigured, but the building envelopes must be located at least 100 feet back from the bluff edge, and at least 50 feet back from the fault line; and (d) the proposed recreational parking and storage area shall be eliminated. The County Planning Commission approved the revised tentative map at the same time that they approved the coastal development permit for construction of the 37 homes (Exhibit No. 6). The tentative subdivision map has recently been submitted for the review and approval of the Executive Director pursuant to Special Condition No. 7 of CDP No. A-1-HUM-96-70.

B. APPELLANT'S CONTENTIONS

The Commission received an appeal of the County of Humboldt decision to approve the project with conditions from Pat Hassen representing Concerned Citizens of McKinleyville. The project as approved by the County is for the construction of 37 single-family residences and associated drainage facilities to be constructed consistent with the subdivision's Planned Development design permit and Coastal Development permit No. A-1-HUM-96-70.

The appellant's contentions are summarized below and the full text of the appellant's contentions as submitted to the Commission is included in Exhibit No. 4. The

contentions allege that the appealed project, as approved by the County, is inconsistent with policies contained in the certified LCP.

1. Project consistency with LCP visual resource protection policies

The appellant contends that the County's approval is inconsistent with LCP policies pertaining to the protection of coastal views to and along the ocean. The appellant contends that the 35-foot maximum allowable height on some lots would block public ocean views.

The appellant further contends that the project as approved is inconsistent with LCP visual resource policies requiring new development to be compatible with the character of the surrounding area. The appellant contends that the maximum allowable 35-foot-height and 5,000-square-foot bulk of the homes is not consistent with the scale of the homes in the area.

2. Project consistency with LCP hazard area policies

The appellant contends that the project as approved is inconsistent with LCP policies that relate to geologic hazards. The appellant contends that some homes would be built in areas that have experienced previous erosion and where unstable fill has been placed. The appellant further contends that the weight of an allowable 35-foot-high, 5,000-square-foot home would exacerbate erosion of the coastal bluff regardless of the required 100-foot setback from the edge of the bluff.

C. LOCAL GOVERNMENT ACTION

On March 2, 2000, the Humboldt County Planning Division of the Planning and Building Department issued a Notice of Final Action (Exhibit No. 3) approving Coastal Development Permit No. CDP-99-42 (Steve Moser). The approved development includes construction of 37 single-family residences and associated drainage facilities to be constructed consistent with the subdivision's planned development design permit and Coastal Development Permit No. A-1-HUM-96-70, granted by the California Coastal Commission on July 8, 1998. The Planning Commission's approval was not appealed to the Board of Supervisors.

The proposed development was approved by the Humboldt County Planning Commission with six special conditions. The conditions that are most relevant to the contentions raised in the appeal are Condition Nos. 1 and 6. Condition No. 1 requires all recommendations set forth in the "R-1" geotechnical and geologic evaluation (SHN, 1994) and the Addendum dated October 5, 1999 to be implemented as a condition to the issuance of permits or other grants of approval for the development or improvement of the site(s). Condition No. 6 requires all development to be in conformance with the Planned Unit Development permit, entitled "Project Refinements, Amendments, and Clarifications", (14 July 1999), and the conditions of Coastal Development Permit No. A-

1-HUM-96-70 imposed by the Commission. The other conditions imposed by the County in the new permit for the 37 homes relate to lighting, services, mitigation measures, and grading. Condition No. 2 requires all exterior lighting to be shielded such that it is not directed off of the parcel as further specified in the conditions of approval in Coastal Development Permit No. A-1-HUM-96-70. Condition No. 3 requires connection to McKinleyville Community Services District water and sewer service before the building permit is filed. Condition No. 4 requires all development pursued under the coastal development permit to be subject to the environmental impact mitigation measures adopted by the Board of Supervisors. Condition No. 5 requires all grading, excluding the curtilage areas, to occur at one time to minimize the length of time the ground will be significantly disturbed.

The County issued a Notice of Final Action on the coastal development permit, which was received by Commission staff on March 14, 2000 (Exhibit No. 3). The project was appealed to the Coastal Commission in a timely manner on March 30, 2000 within 10-working days after receipt by the Commission of the Notice of Final Local Action. On March 30, 2000 staff requested all relevant documents and materials regarding the subject permit from the County; these materials were received on April 18, 2000.

D. PROJECT SETTING AND DESCRIPTION

Project Setting

The project site is located on a gently sloping, open coastal terrace that is about 50 to 80 feet above sea level. The site includes the upper portion of the coastal bluff west of the terrace. The Hammond Trail is located mid-slope on the bluff. The lower portion of the bluff below the Hammond Trail adjoins a low-lying sandy terrace at least 70 feet wide covered with riparian vegetation that fronts on the east bank of the Mad River estuary.

The areas to the west and to the immediate north of the subject property are primarily undeveloped lands consisting of the Hammond Trail, the old channel of the Mad River, whose mouth is near to the south of Sand Pointe as a result of the river naturally breaching the sand spit in 1999, the sand spit, the Pacific Ocean, and Widow White Creek. Much of this area is designated and zoned in the County LCP as NR (Natural Resources). Consequently, these areas are not comparable to the subject property. However, the areas to the east and to the south consist of fully developed or developing subdivisions.

The property is currently developed with one residential unit which fronts Murray Road near the southeast corner of the project site. The site was previously used for agriculture, primarily to grow flowers and bulbs. A series of small indentations indicating where gullying has occurred in the past is found on the top of the bluff. Natural drainage of the site is to the west and southwest with a minor drainage area to the north to Widow White Creek.

There are generally five areas in the project vicinity that currently provide or will provide public views to and along the ocean. These viewing areas include Murray Road, the Hammond Trail, the

proposed northern Hammond Trail extension, Sand Pointe Drive, and streets within the adjacent Pacific Sunset subdivision. Except for the Hammond Trail itself, the area from the Mad River shoreline to the top of the bluff is generally covered by dense brush and trees. The dense vegetation limits the northwesterly views from Murray Road to blue water above and between the trees growing at the top of the bluff. A small corridor void of vegetation along the south end of the bluff provides an area of unobstructed view of the water including both blue and white water views. The slightly higher elevation of Murray Road at the southeast corner of the site allows northwesterly views of the coast ridge, Trinidad Head and offshore rocks in the distance, minimally obstructed by tall trees.

From the area of the main road proposed through the subdivision, Sand Pointe Drive, the view from the south end would be limited by the bluff edge vegetation that blocks nearly all view of the water with the exception of the small corridor at the south edge of the site. Tall cypress and eucalyptus trees and residential development would limit southerly views of the water from Sand Pointe Drive. From the center of the route of Sand Pointe Drive, the slightly higher elevation would provide blue water views, distant views of Trinidad Head, and some white water in areas of lower bluff edge vegetation. Heading north along the area of Sand Pointe Drive, views of the ocean and Trinidad Head become entirely obstructed by the dense forest at the northern property boundary.

The existing streets within the Pacific Sunset subdivision directly east of the site also provide public views to the ocean. These views are limited to intermittent blue water views from between the existing residences and above and between the vegetation along the bluff edge.

The most significant, unobstructed coastal views in the project vicinity are from the existing portion of the Hammond Trail which runs along the bluff face west of the proposed homes. As a condition of the Commission's approval of the subdivision, the applicant is required to construct an extension of the Hammond Trail extending from the bluff along the northern edge of the subdivision. The route of the trail extension does not provide coastal views to the north due to the dense beach pine forest at the northern property boundary. Coastal views southwesterly from the area of the trail extension are also limited to the blue water visible above and between the vegetation at the bluff edge and are further obstructed by residential development to the south.

Project Description

The proposed project subject to this appeal involves a "blanket" coastal development permit to allow for the construction of 37 single-family residences and associated drainage facilities to be constructed consistent with the subdivision's Planned Development design permit and Coastal Development Permit A-1-HUM-96-70, granted by the California Coastal Commission on July 8, 1998. Specific design plans for the homes were not developed prior to approval of the "blanket" coastal development permit. Instead, the applicant submitted a list of restrictions that provide development criteria for the physical characteristics of the homes. The restrictions address roofs, exterior siding, windows, fences, chimneys, storage facilities, driveways, exterior lighting, and accessories (Exhibit No. 5). As noted in the Background section above, Coastal Development Permit No. A-1-HUM-96-70 granted for the subdivision itself, imposed a deed restriction

condition that limits the maximum height of the homes to 35 feet on some of the lots and to 23 feet on the rest of the lots (Exhibit Nos. 6 & 7). In addition, the condition limits the maximum residence size to 5,000-square-feet.

E. SUBSTANTIAL ISSUE ANALYSIS

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

1. Appellant's Contentions That Are Valid Grounds for Appeal

The contentions raised in the appeal present valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the Commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., tit. 14, section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development as approved by the County raises no substantial issue.

a. Project consistency with LCP visual resource protection policies

The appellant contends that the project as approved is inconsistent with McKinleyville Area Plan (MAP) Policy 3.42 because the 35-foot homes would block public views to the ocean. Specifically, the appellant contends that 35-foot homes along the bluff would block public coastal views from Murray Road along the south edge of the site and from Sand Pointe Drive, the main access road within the subdivision. The appellant also contends that the project as approved is inconsistent with MAP Policy 3.42 because the maximum allowable 35-foot height and 5,000-square-foot bulk of the homes would not be consistent with the scale of the homes in the area.

LCP policies

LUP Policy 3.42 states in applicable part:

30251. *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of the surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

30253. *New development shall:*

Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

A. *PHYSICAL SCALE AND VISUAL COMPATIBILITY*

1. *No development shall be approved that is not compatible with the physical scale of development as designated in the Area Plan and zoning for the subject parcel;*

and the following criteria shall be determinative in establishing the compatibility of the proposed development;

- a. for proposed development within an urban limit as shown in the Area Plan that such development meets all standards for the principal permitted use as designated in the plan and zoning;*
- b. for proposed development not within an urban limit as shown in the Area Plan, that such development meet all standards for the principle permitted use as designated in the plan and zoning, where such principle use is for detached residential, agricultural uses, or forestry activities;*
- c. for proposed development that is not the principle permitted use, or that is outside an urban limit and for other than detached residential, agricultural uses, or forestry activities, that the proposed development is compatible with the principle permitted use, and , in addition is either:*
 - (1) No greater in height or bulk than is permitted for the principle use, and is otherwise compatible with the styles and visible materials of existing development or land forms in the immediate neighborhood, where such development is visible form the nearest public road.*
 - (2) Where the project cannot feasibly conform to paragraph 1, and no other more feasible location exists, that the exterior design, and landscaping be subject to a public hearing, and shall be approved only when:*
 - (a) There is no less environmentally damaging alternative location.*
 - (b) The proposed exterior design, and landscaping are sufficient to assure compatibility with the physical scale established by the surrounding development;*

Discussion: As stated above, the LCP requires that permitted development be sited and designed to protect public views to and along the ocean and scenic coastal areas, and to be visually compatible with the character of the surrounding area. The appellant asserts that 35-foot-high, 5,000-square-foot homes would be inconsistent with the surrounding character of the area. However, the character of the area itself is partially defined by the vast diversity of homes in the area. The residences in the area consist of assorted heights and sizes. The subdivision directly to the east of the subject site is comprised of a mixture of one and two-story homes of varying size. The subdivision to the south has a minimum 3,000-square-foot size requirement and is comprised of homes of that size and larger. In addition, homes in the subdivision to the north range in size from 3,000 to 5,000-square-feet. The proposed 35-foot-height and 5,000-square-foot area restrictions are maximum limits that are consistent with the diversity of size and height that defines the character of the area. The maximum size limits do not necessarily imply that all or

any homes at the site would be constructed to those dimensions. Therefore, the maximum allowable height and bulk of 35-foot-high (on 16 of the 37 lots) and 5,000-square-feet does not raise a substantial issue of consistency with the LCP policies addressing compatibility of development with the character of the surrounding area.

The appellant also contends that the 35-foot-high homes would block public views to the ocean. The appellant specifically notes that the 35-foot-high homes would block views from Murray Road and Sand Pointe Drive. As noted in the site description, there are generally five areas in the project vicinity that currently provide or will provide public views to the ocean including Murray Road, the Hammond Trail, the Hammond Trail extension, Sand Pointe Drive, and streets within the Pacific Sunset subdivision to the east.

The western bluff edge of the site is densely vegetated with the exception of a limited corridor void of vegetation toward the south end of the site. Blue water views are visible above the line of vegetation, as are white-water views in the small area void of vegetation. As approved, the homes at the south end of the subdivision near Murray Road would be on lots with a 23-foot height limit. The 23-foot-high homes that would be constructed along the southwest portion of the site would not extend significantly above the level of existing vegetation along the bluff edge as seen from Murray Road and would therefore not significantly impact existing blue water views. The 35-foot-height limit of the homes on 16 of the 37 lots, 8 of which are among the western-most lots, would extend further above the level of vegetation and would block more of the blue water view than the 23-foot-high homes. However, as proposed, the 35-foot homes would not be located near Murray Road and would still allow public views to and along the ocean from Murray Road.

Similarly, blue water views from the yet to be constructed Sand Pointe Drive would be somewhat impaired by 35-foot homes along the bluff. However, from vantage points along Sand Pointe Drive, the public would be so close to the homes that views would be inevitably impaired regardless of the height of the structures. While the homes would partially block some public views in those specific lot locations, the impact would not be significant because other public viewing opportunities exist along Sand Pointe Drive as well as from other surrounding public vantage points such as the Hammond Trail.

The issue of protecting public views to and along the coast was addressed by the Commission during the previous approval of the subdivision itself and resulted in project elements that would continue to provide areas available to the public for viewing the coast. As approved, there will be an area of open space among the westernmost row of homes from which the public would have a view of the ocean from Sand Pointe Drive unobstructed by residences. In addition, at the north end of Sand Pointe Drive will be a west-facing, 5-car public parking area available for viewing the ocean. The Commission also previously required a “public resting park” with 5 parking spaces from which the public would have views to the ocean from along Murray Road. The Commission also conditioned the approval of the subdivision to reduce the density of the lots to provide

view corridors between the homes as seen from Sand Pointe Drive and from the streets within the subdivision to the east. The County's approval of the homes imposed Condition No. 6 to require that development of the homes be consistent with Coastal Development Permit No. A-1-HUM-96-70 which imposed the above listed elements that provide public views to the ocean (see Exhibit No. 7 for conditions of CDP A-1-HUM-96-70). Furthermore, the most pristine, unobstructed views of the coast in the project area are from the Hammond Trail. These views will be unaffected by the project. Due to the dense vegetation upslope from the trail to the east, the angle of the slope, and the required 100-foot setback of the homes from the bluff edge, the 35-foot homes will not impair public views from the trail.

The appellant also contends that the 35-foot-height would block "the public maximum blue water view." The vacant condition of the subject site currently provides maximum public views and construction of 35-foot homes at the site would undoubtedly affect those views. However, the site is planned for residential development rather than for open space in the County's LCP and the proposed heights are consistent with what is allowable under the County's zoning ordinance. The project site has not been designated as being either a "coastal scenic" or a "coastal view" area in the LCP. Furthermore, the County's approval was conditioned to be consistent with Coastal Development Permit No. A-1-HUM-96-70 in which the Commission imposed numerous conditions requiring project elements that protect public views of the coast. Therefore, the County's decision does not set a negative precedent for future interpretations of the LCP.

As discussed above, the extent and scope of the development has been previously reduced resulting in a lower density of lots. The lower density resulted in the project being more consistent with the character of the adjacent residential subdivision and provided more and wider view corridors between the homes. The allowable 35-foot homes would block some public view to the ocean. However, even if all 16 of the 37 lots were developed with homes of the maximum allowable 35-foot height, the view impact would not be a significant impact on coastal resources and would not be an impact of statewide significance because many public viewing opportunities have been protected through other elements of the project.

Therefore, the Commission finds that no substantial issue is raised with regard to the provisions of the LCP policies in Section 3.42 of the McKinleyville Area Plan that requires new development to be sited and designed to protect public views to and along the ocean and scenic coastal areas, and to be visually compatible with the character of the surrounding area.

b. Project consistency with LCP hazard area policies

The appellant contends that some 35-foot homes would be built in areas that have experienced previous erosion and where unstable fill has been placed. The appellant further contends that the weight of an allowable 35-foot-high, 5,000-square-foot home

would exacerbate erosion of the coastal bluff regardless of the required 100-foot bluff setback.

LCP policies

LUP Policy 3.28 of the McKinleyville Area Plan states:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Discussion: The County imposed a condition on the approval of the homes which requires that all recommendations set forth in the “R-1” geotechnical and geologic evaluation (SHN, 1994) and Addendum dated October, 5, 1999 be implemented in the development or improvement of the site(s) (Exhibits Nos. 8 & 9). In addition, the construction of the homes was conditioned to require all development to be consistent with Coastal Development Permit No. A-1-HUM-96-70. As conditioned, no building permit or other building entitlement could be granted for an individual home that was not consistent with these requirements. The staff report prepared by the County indicates that the Building Inspection Division (BID) has determined that based upon correspondence from the applicant’s agent, the findings of the preliminary geologic and geotechnical R1 report (SHN, 1994) and the Addendum dated October 5, 1999, adequate building sites exist on all lots. Accordingly, BID indicated no concerns regarding structural development at the site.

Furthermore, the Commission previously addressed the issue of the project’s consistency with LCP policies relating to geologic hazards and new development in the conditions of approval for the subdivision. As a result, the Commission required that all building envelopes be setback 100-feet from the bluff edge to assure stability and structural integrity and prevent the development from creating or contributing to erosion or geologic instability of the site. The County’s approval of the homes imposed Condition No. 6 to require that development of the homes be consistent with CDP No. A-1-HUM-96-70 which imposed the 100 foot setback.

In contrast to the geologic report and addendum that provide a high degree of legal support for the County’s decision that the project as conditioned is consistent with the LCP hazard policies, the appellant has not submitted any technical or factual information that demonstrates that homes of the proposed height and bulk would exacerbate bluff

erosion. Furthermore, the appellant has not submitted any technical information to suggest that the 100-foot setback previously imposed by the Commission is not adequate to prevent geologic hazards.

The Commission therefore concludes that the appeal raises no substantial issue with respect to conformance of the approved project with LCP provisions pertaining to geologic hazards and new development.

Conclusion

The Commission finds that, for the reasons stated above, that the appeal raises no substantial issue with respect to conformance of the approved project with the certified LCP.

EXHIBITS:

1. Regional Location
2. Site Location
3. Notice of Final Action, Staff Report, and Conditions of Approval (March 3, 2000)
4. Appeal to Commission (March 30, 2000)
5. Development Restrictions (as proposed by applicant)
6. Subdivision Map as Approved by Humboldt County
7. Conditions of Approval for CDP # A-1-HUM-96-70
8. Relevant Excerpts from Geologic and Geotechnical Report (SHN, 1994)
9. Addendum to Geologic and Geotechnical Report (SHN, 1999)
10. Correspondence (8 letters)